

STATE OF MICHIGAN
IN THE SUPREME COURT

BRIAN PERRY,
Plaintiff-Appellee,
vs.

Supreme Court No. 129943
Court of Appeals No. 254121
Lower Court No. 03-053489-NI

GOLLING CHRYSLER PLYMOUTH JEEP, INC.
a Michigan Corporation,
Defendant, Appellant,

**PLAINTIFF-APPELLEE'S ANSWER TO DETROIT AUTOMOBILE DEALERS
ASSOCIATION'S MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

NOW COMES Plaintiff-Appellee (Plaintiff), by and through his attorney, and for his
answer to MADA's motion states:

1. Defendant lacks the knowledge or information sufficient to form a belief as to the
truth of the allegation.
2. Defendant lacks the knowledge or information sufficient to form a belief as to the
truth of the allegation.
3. Plaintiff denies these allegations.
4. Plaintiff denies these allegations.
5. Plaintiff denies these allegations.
6. No answer required.

Plaintiff requests that the Court deny this motion.

Dated: January 13, 2006

Respectfully Submitted,

BARNETT & TRAVER, P.C.

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JAN 17 2006
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CLERK
MICHIGAN SUPREME COURT

129943

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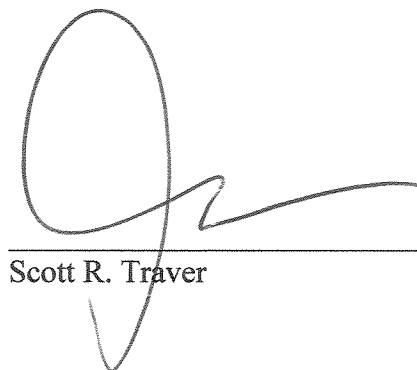
PROOF OF SERVICE

The undersigned certifies that Plaintiff-Appellee's Answer to and Brief in Response to DADA's Motion for Leave to File Amicus Curiae Brief were served on the party, parties or entities named below by depositing a copy thereof in the U.S. Mail, postage prepaid, on January 13, 2006:

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December 28, 2005

Clerk of the Court
Michigan Supreme Court
925 W. Ottawa
Lansing, MI 48933

RE: Perry v Golling Chrysler Plymouth Jeep
Supreme Court No. 129943
COA No. 254121
Trial Court No. 03-053489-NI

Dear Sir/Madam:

Enclosed please find Plaintiff-Appellee's Answer to and Brief in Response to DADA's Motion for Leave to File Amicus Curiae Brief and Proof of Service.

Please file these documents in your usual manner and return a time-stamped copy of the proof of service to our office in the enclosed envelope.

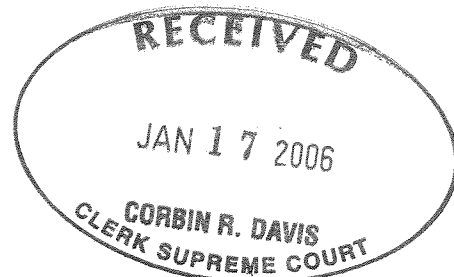
Thank you for your attention to this matter.

Sincerely,

Scott R. Traver

enc.

xc w/enc: Ronald S. Lederman, Esq/Charles Randau, esq
Jason W. Johnson/Ray Foresman, esq
Robert Y. Yeller II/Michael J. Weikert, esq



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**PLAINTIFF-APPELLEE'S BRIEF IN RESPONSE TO MICHIGAN
AUTOMOBILE DEALERS ASSOCIATION'S AMICUS CURIAE BRIEF**

PROOF OF SERVICE

Respectfully Submitted,

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TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES	ii
COUNTER-STATEMENT OF QUESTIONS PRESENTED	iv
COUNTER-STATEMENT OF FACTS	1
ARGUMENT	
I. Defendant Owned the Subject Vehicle When the Accident Occurred	3
CONCLUSION	9

INDEX OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Akmakjian v Make a Deal Auto Sales</i> , COA No. 181933 (1996)	4
<i>Bednarski v Fairlane Ford Sales, Inc</i> , COA No. 178713 (1996)	4
<i>Botsford General Hospital v Citizens Ins Co</i> , 195 Mich App 127; 489 NW 2d 137 (1992)	7
<i>Brockway v Petted</i> , 79 Mich 620; 45 NW 61 (1890)	6
<i>Daimler Chrysler Corporation et al v Process Development et al</i> , COA No. 234827, 235741 (2003)	6
<i>Florence ex rel Florence v Hatfield Used Cars</i> , COA No. 227383 (2002)	4
<i>Goins v Greenfield Jeep Eagle Inc</i> , 449 Mich 1; 534 NW2d 467 (1995)	4,6
<i>Harrison v Olde Financial Corp</i> , 225 Mich App 605; 572 NW 2d 679 (1997)	3
<i>Hartford Accident & Indemnity Co v The Used Car Factory, Inc</i> COA No. 198104 (1997)	4
<i>In re Heffernan Estate</i> , 143 Mich App 85; 371 NW2d 481 (1985)	7
<i>In re Hill's Estate</i> , 349 Mich 38; 84 NW2d 457 (1957)	5
<i>In re Shattuck's Estate</i> , 324 Mich 568; 37 NW2d 555 (1949)	5
<i>Kapolka v Ray Laetham Pontiac-Buick-GMC Truck</i> , COA No. 180036 (1996)	4
<i>Ladd v Ford Consumer Finance Company, Inc</i> , 217 Mich App 119; NW 2d 826 (1996)	4
<i>Magreta v Ambassador Steel Co</i> , 380 Mich 513; 158 NW2d 473 (1968)	6
<i>Matter of Colon</i> , 144 Mich App 805; 377 NW2d 321 (1985)	7
<i>Messer v Averill</i> , 28 Mich App 62; 183 NW 2d 802 (1970)	3,7
<i>Paprocki v Jackson County Clerk</i> , 142 Mich App 785; 371 NW2d 450 (1985)	5
<i>Perry v Boyce</i> , 323 Mich 95; 34 NW 2d 570 (1948)	5

<i>PSB State Bank v Comerica, Inc</i> , 151 Mich App 452; 391 NW2d 371 (1986)	6
<i>Stanton v City of Battle Creek</i> , 466 Mich 661; 647 NW 2d 508 (2002)	3
<i>State Treasurer v Cuellar</i> , 190 Mich App 464; 476 NW2d 644 (1991)	7
<i>Taylor v Burdick</i> , 320 Mich 25; 30 NW 2d 418 (1948)	7
<i>Vriesman v Ross</i> , 9 Mich App 102; 155 NW 2d 857 (1967)	7
<i>Weston v Dowty</i> , 163 Mich App 238; 414 NW2d 165 (1987)	5
<i>Zechlin v Bridge Motor Sales</i> , 190 Mich App 339; 475 NW 2d 60 (1991)	3
<u>Statutes</u>	
MCL 257.233(9)	5,6
MCL2600.6075	4
<u>Court Rules</u>	
MCR 3.105(J)(1)(a)	4

COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. DID THE SIGNING OF THE DOCUMENTS AT DEFENDANT'S DEALERSHIP SIGNIFY TRANSFER OF TITLE/OWNERSHIP FROM DEFENDANT TO THE DRIVER OF THE VEHICLE INVOLVED IN THE SUBJECT ACCIDENT?

Plaintiff answers, "No."

Defendant answers, "Yes."

Trial Court answered, "Yes."

The Court of Appeals answered, "No."

Amicus Curiae, MADA, answers, "Yes"

COUNTER-STATEMENT OF FACTS

This lawsuit arises out of a motor vehicle accident that occurred on October 20, 2000 in which Plaintiff suffered serious injuries. Plaintiff alleges that Defendant owned the 2000 Plymouth Neon involved in the accident, which was being driven by Ksenia Nichols.

On October 19, 2000 Ms. Nichols went to Defendant's dealership to look at and possibly purchase a vehicle. While there, Ms. Nichols decided to buy a used 2000 Plymouth Neon and began the process of purchasing this vehicle. This process included filling out and signing numerous documents.

One such document which Ms. Nichols purportedly signed, on October 19, 2000, is an Application for Michigan Title-Statement of Vehicle Sale (form RD-108) (**Exhibit #1**). The Application shows that the Security Interest was recorded eleven days later on October 30, 2000.

The Application also shows that Americredit Financial Services, who financed the vehicle, filed its secured interest on October 19, 2000. Other paperwork processed by Defendant, however, indicates that financing wasn't even approved until October 20, 2000, which suggests that Americredit filed its security interest before it approved Ms. Nichols loan.

Second, a review of the title endorsed for this vehicle shows that the Secretary of State issued the ownership of this vehicle to Ms. Nichols on October 31, 2000, approximately eleven days *after* the accident (See **Exhibit #2**).

Additionally, **Exhibit #2** shows that the filing date for Americredit identified on the title is October 30, 2000, a clear indication that the date identified on the Application for Michigan Title is incorrect.

The back of the Certificate of Title shows that the original title that Defendant retained while awaiting a new title from the Secretary of State was not actually endorsed by Defendant and

transferred over to Ms. Nichols until October 23, 2000, three days after the accident (see pg 2 of **Exhibit #2**). While Defendant, in its brief, tries to identify this as an odometer statement, it is the endorsement section for assignment of the title from seller to purchaser.

Ms. Nichols' testimony establishes that Defendant unequivocally could not have complied with the relevant statutes identifying proper transfer of title, and therefore transferred ownership of a vehicle. Specifically, Ms. Nichols, in her deposition testified to the following:

Q Do you understand that there's another document presented to me which is an Application for Michigan Title dated October 19th, did you see that?

A Yes.

Q Is it your testimony that those particular dates are false or inaccurate in that you never did sign it on that date, it was actually the 20th of October?

A Can I explain something?

Q You can explain anything you want. Go ahead.

A I went in on the 19th, it's dated the 19th, but it didn't really go through until the 20th. My approval didn't come through until the 20th.

Q Your approval for your loan is what we are talking about?

A Correct. So on the 20th I went in and signed these papers.

Q So you were at the dealership on October 20th, the same day of this accident, is that correct?

A Yes

Q What time were you at the dealership?

A I would say between five and 5:30.

(See **Exhibit #3**)

The following dates, then, are the dates relevant to the issues in this lawsuit:

- October 20, 2000 - paperwork drafted and signed
- October 20, 2000 - accident occurs

- October 23, 2000 - Defendant assigns title to Ms. Nichols
- October 30, 2000 - Security Interest filed
- October 31, 2000 - Secretary of State issues new title

ARGUMENT

I. DEFENDANT OWNED THE SUBJECT VEHICLE WHEN THE ACCIDENT OCCURRED

A. Introduction

In Plaintiff's Brief opposing Defendant's Application, Plaintiff argued that Defendant improperly defined 'execution' and provided a history of case law that showed Defendant's argument to be inapplicable as it relates to title to a vehicle.

MADA's arguments mirror Defendant's arguments regarding 'execution' of the application for title and cannot be reconciled with relevant case law because of a fundamental flaw in the basis of their arguments.

B. Goins v Greenfield

Part of MADA's argument is the same argument raised by Defendant, namely that the court of appeals' reliance on *Goins v Greenfield Jeep Eagle Inc*, 449 Mich 1; 534 NW2d 467 (1995) was misplaced because the *Goins* court's holding regarding execution was dicta. The argument implies that in 2005, when ruling on this case, the court of appeals found the holding from this Court's *Goins* ruling ten years ago and applied it, for the first time, to a case.

The argument has no merit because the holding was not mere dicta. The rule of law on this issue was laid down long before *Goins* was decided and was then followed in a line of cases decided after *Goins*. Following is a list of several of those cases.

Messer v Averill, 28 Mich App 62; 183 NW 2d 802 (1970)

Zechlin v Bridge Motor Sales, 190 Mich App 339; 475 NW 2d 60 (1991)

Goins v Greenfield Jeep Eagle Inc, 449 Mich 1; 534 NW2d 467 (1995)

Ladd v Ford Consumer Finance Company, Inc., 217 Mich App 119; NW 2d 826 (1996)

Akmakjian v Make a Deal Auto Sales, COA No. 181933 (1996)

Bednarski v Fairlane Ford Sales, Inc, COA No. 178713 (1996)

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Florence ex rel Florence v Hatfield Used Cars, COA No. 227383 (2002)

In one of the cases listed above that predates *Goins*, *Messer v Averill*, 28 Mich App 62; 183 NW 2d 802 (1970), the court ruled on this issue as follows:

For purposes of our analysis, we shall assume defendant DeRidder's allegations are true. He asserts that prior to the accident, several events had transpired which constituted a transfer of ownership, pursuant to the Michigan Vehicle Code: (1) the subject automobile was sold and delivered to Averill; (2) a statement of sale of a motor vehicle and application for Michigan certificate of title for the automobile were completed and executed by Averill in the presence of a notary public, who certified Averill's signatures; (3) temporary registration permit was completed for the automobile and was delivered to Averill; (4) Averill executed the transfer of title form for his trade-in automobile; (5) a 'registered dealer form' was completed for the reassignment of title of the subject automobile to Averill, was executed by DeRidder before a notary public, who certified DeRidder's signature. It is defendant DeRidder's claim that the sum total of his actions prior to June 17 was sufficient to constitute a transfer of ownership according to law. In any event, he argues, the application for title, one day subsequent to the accident, makes legal ownership pass, retroactive to the day of the alleged agreement for transfer.

The word 'owner' under the vehicle code obviously is not used in the sense of referring to persons whose title is good against all others, and under the code there may be several such owners. One or more persons may be liable as owners even though none of such owners possess all the normal incidents of ownership.

Inasmuch as it is undisputed that the dealer herein had not, at the time of the accident, complied with the statute providing for transfer of ownership, he is deemed an owner under the statute.

The mandates of the Michigan Vehicle Code must be followed and our

courts have been adamant in their refusal to sanction anything less than strict compliance.

In *Messer*, the dealership claimed to have done substantially more than Defendant claims to have done in this case, but the court made it clear that since the dealership had not applied to the secretary of state for transfer of title before the accident, the dealership was an owner of the subject vehicle. Moreover, the court held that strict compliance is the standard for transfer of title.

In another case that predates *Goins*, *Zechlin v Bridge Motor Sales*, 190 Mich App 339; 475 NW 2d 60 (1991), the court held:

Finally, we address whether the court properly determined that Bridges' ownership interest in the Buick terminated before the accident. We agree with the trial court that it did.

M.C.L. § 257.233(5); M.S.A. § 9.1933(5) provides that the effective date of transfer of title or interest in a motor vehicle is the date of execution of either the application for title or the certificate of title. Here, Bridges **filed the application** for title on September 6, 1988, several weeks before the accident that occurred on September 30, 1988. The trial court did not err in granting summary disposition in favor of Bridges.

Importantly, both *Messer* and *Zechlin* were cited in *Goins*. The rule of law set forth in *Goins* (and the cases which predated it) was well enough established that, other than *Ladd* (which applied the ruling in *Goins* to a mobile home sale), it was not necessary to publish the cases decided after *Goins*.

C. Execution/Assignment

Both Defendant and MADA argue that 'execution' cannot mean what Michigan courts have said it means and further argue that 'execution' means merely signing paperwork. The arguments are not valid for several reasons.

First, 'execution' can mean different things in different contexts.

For example, ‘execution’ on a judgment is a command to the sheriff or court officer to levy the prevailing party's damages and costs on the opposite party's property. MCR 3.105(J)(1)(a).

A ‘body execution’ is the civil arrest of a person after a judgment against him or her exists and a satisfactory showing exists regarding the concealment, removal, or disposition of property of the debtor with intent to defraud the judgment creditor. MCL 600.6075.

In the context of a will, the intent to execute a valid will is not sufficient to give validity to an instrument not executed in accordance with the statutory requirements and there may be no taking under an instrument lacking these formal requisites. For example, a will signed by only one attesting witness is invalid. *In re Hill's Estate*, 349 Mich 38; 84 NW2d 457 (1957), *Perry v Boyce*, 323 Mich 95; 34 NW 2d 570 (1948), *In re Shattuck's Estate*, 324 Mich 568; 37 NW2d 555 (1949).

Second, the legislature is presumed to have used words that have been subject to judicial interpretation in the sense in which they have been interpreted. Additionally, words and phrases that have acquired a technical meaning in the law are construed according to that meaning when they appear in a statute. *Paprocki v Jackson County Clerk*, 142 Mich App 785; 371 NW2d 450 (1985).

The holding in *Paprocki* is important as it relates to the statute at issue in this case, namely MCL 257.233(9), which reads:

MCL257.233(9) Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the **assignment of the** certificate of title (emphasis added).

Both MADA and Defendant have quoted MCL 257.233(9) in their Briefs, but have used

an older version of the statute that does not contain the words ‘assignment of the’ (In 1999, the legislature inserted "assignment of the" in subsection 9 of the statute).

The word ‘assignment’ has been examined by Michigan courts, has a technical meaning and been defined as "a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein...To constitute a valid assignment there must be a perfected transaction between the parties which is intended to vest in the assignee a present right in the thing assigned." *Weston v Dowty*, 163 Mich App 238; 414 NW2d 165 (1987).

Under MCL 257.233(9), one way a dealer can effectively transfer title is to assign it to the buyer. In this case, Golling assigned the title to the buyer on October 23, 2000, three days after the accident, so for purposes of assignment, Golling owned the car when the accident occurred.

Regarding ‘execution’, the legislature's silence for several years after the supreme court's interpretation of the legislative intent in a statute must be construed as consent to the accuracy of the interpretation. *Magreta v Ambassador Steel Co*, 380 Mich 513; 158 NW2d 473 (1968), *PSB State Bank v Comerica, Inc*, 151 Mich App 452; 391 NW2d 371 (1986).

Here, the legislature added language to MCL 257.233 four years after this Court’s ruling in *Goins v Greenfield Jeep Eagle Inc*, supra, and after several cases followed the holding in *Goins*. The legislature had a clear opportunity to change section 9 of the statute if the definition set forth in *Goins* regarding ‘execution’ was not correct. It did not do so.

Regarding ‘execution’, it too has been given a technical meaning and has been interpreted by Michigan courts.

Recently, in *Daimler Chrysler Corporation et al v Process Development et al*, COA No. 234827, 235741 (2003), the court defined ‘execution’ as "completed; carried into full effect;

already done or performed; signed; taking effect immediately”, citing Black's Law Dictionary. In that case, the court noted that even one of the parties, Hartford, defined "execute" to mean "perform what is required to give validity to" (**Exhibit #4**).

The term 'execute' has been similarly defined as it relates to deeds. A deed may be properly signed, witnessed, and acknowledged, but it is not *executed* until delivery. *Brockway v Petted*, 79 Mich 620; 45 NW 61 (1890).

In the context of MCL 257.233(9), 'execution' has been clearly defined as more than simply 'signature'.

A review of both Defendants's and MADA's Briefs also reveals that they have placed the focus of the statute on the wrong person related to execution. They have both looked at the transaction from the vantage point of the buyer rather than the seller.

While it is true that the buyer must sign certain documents, the statute's focus is on the seller. That is, to effectuate transfer of title, the statute requires that the *seller* (dealer) perform certain affirmative steps as set forth in the cases that have ruled on the issue.

D. Intent

The words of a statute must be construed in light of the general purpose and intent sought to be accomplished by enactment of the statute. *State Treasurer v Cuellar*, 190 Mich App 464; 476 NW2d 644 (1991), *In re Heffernan Estate*, 143 Mich App 85; 371 NW2d 481 (1985).

In giving effect to the legislature's intent, the court must look to the object of the statute and apply a reasonable construction which best accomplishes the statute's purposes. *Matter of Colon*, 144 Mich App 805; 377 NW2d 321 (1985).

One purpose of the older version of the statute was to ensure valid transfers to avoid fraud. *Taylor v Burdick*, 320 Mich 25; 30 NW 2d 418 (1948). Another purpose is to ensure the initial

validity of the transfer of ownership. *Vriesman v Ross*, 9 Mich App 102; 155 NW 2d 857 (1967).

There may be several owners of a motor vehicle, within the meaning of the Michigan Vehicle Code, with no one owner possessing all the normal incidents of ownership. More than one person can be liable as owner. *Messer v Averill*, 28 Mich App 62; 183 NW2d 802 (1970), *Botsford General Hospital v Citizens Ins Co*, 195 Mich App 127; 489 NW 2d 137 (1992). Therefore, the validity of the transfer of title is paramount to avoid the very situations that can arise if the statutory mandates are not followed.

The case at bar is shows the importance of the statute. Here, the buyer was in the dealership on October 19, 2000 and the next day, the 20th. Some documents were signed on the 19th and some on the 20th. The financing company (Americredit) has documents with both dates listed (19th and 20th), but the actual filing date of Americredit's security interest was not until October 30, 2000, a clear indication of untoward manipulating of documents.

The accident happened on the 20th, a Friday and apparently the dealership found out about it on the 23rd, a Monday, and immediately assigned the title to the buyer - a clear indication that the dealership knew title had not transferred before that date.

The statute is designed to avoid the very problems that have arisen in this case.

Simply having a prospective purchaser sign documents and deeming that as execution is not sufficient to transfer title because it ignores the affirmative duties of the seller as it relates to execution.

E. Effectuating Execution

The other argument raised by MADA is that because dealers have expanded business hours, execution must mean only signing paperwork. MADA's argument is wrongheaded.

The argument is akin to a party store owner saying that because his store is open at 9:00

am on Sundays, the law prohibiting the sale of alcohol before noon on Sundays cannot really mean what it says because he cannot comply with it.

All the statute requires is an affirmative duty on the seller to perform what is required to give validity to the transaction. If a dealership chooses to have extended hours, it must simply have staff present to collate and get the documents to the secretary of state.

The point of the statute is to *properly* transfer title to avoid fraud (documents not being filed and dates or other items being changed), delays and other problems associated with the affirmative steps not being performed.

The statute is designed to avoid the very problems that have arisen in this case.

CONCLUSION/RELIEF REQUESTED

Defendant was the, or at least an, owner of the subject vehicle when the accident occurred. Plaintiff respectfully requests that the Application be denied and the court of appeals ruling be affirmed.

Dated: January 12, 2006

Respectfully Submitted,

SCOTT R. TRAVER (P53842)
Attorney for Plaintiff